

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**ATTACHMENT NO. 2****INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8, Division 1, Chapter 4, Subchapter 7, Article 116, Section 5278 of the
General Industry Safety Orders

Loading of Explosive Materials**SUMMARY**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking to provide technical clarifying amendments to the General Industry Safety Orders (GISO), Section 5278. The proposal is a response to an Occupational Safety and Health Appeals Board Decision in the Matter of Ladd and Associates, Docket Nos. 99-R2D6-2068 and 2069 in which an employer was cited by the Division of Occupational Safety and Health (Division) for failing to implement an alternative safety plan when it is problematic to maintain a 50 foot clearance zone around a loaded hole filled with an explosive charge and awaiting detonation as required in Section 5278. The Administrative Law Judge's Decision indicates that the requirement for the 50 foot clearance applies only during the loading operation, which allows potential hazards to exist without such a regulation once loading has concluded. It is noted that this Appeals Board Matter concerned provisions of the Construction Safety Orders that have been repealed; GISO, Section 5278 is the relevant, presently-operative standard.

Section 5278 contains explosive material loading procedures and specifications associated with blasting operations. Section 5278(d) mandates that no one but the loading crew, inspection personnel, and authorized supervisory personnel are to be allowed within 50-feet of the loaded area when explosive materials are being placed in drill holes. Currently, Section 5278 does not clarify that the clearance zone (restricted area) within 50-feet of the loaded holes must be maintained free of personnel, except for the attendant, loading/detonation crew, inspection personnel and any other authorized supervisory personnel while the drill holes, loaded with armed explosive materials, await detonation. Section 5278 does not stipulate that when there is a problem maintaining the 50 foot clearance, an approved alternative loading plan in accordance with subsection (d) is to be implemented. This proposal provides such clarification and has been determined by the Board's and Division's staff to be consistent with established industry blasting practices in California.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

§5278. Loading of Explosive Materials-General.

The proposal adds language to existing Section 5278 [in both new subsections (o)(3) and (w)(3)] to the effect that no persons other than the attendant(s), the loading/detonation crew, inspection personnel, and authorized supervisory personnel are to be allowed within 50-feet of the loaded holes and includes in both new subsections (o)(3)(A) and (w)(3)(A) the requirement to develop and implement an approved alternative plan pursuant to current Section 5278(d) at blasting sites where the required 50-foot clearance to the loaded holes cannot be maintained.

The proposal is necessary to clarify that the existing 50-foot clearance and alternate blasting plan requirements for loading activities currently in Section 5278(d) also apply to the drill holes once they are loaded with explosive materials. These clarifications serve to enhance the safety of employees working in the vicinity of loaded blasting holes.

This proposal is consistent with the federal requirements in 29 Code of Federal Regulations, Section 1926.905(i), which mandates that no activity of any nature other than that which is required for loading holes shall be permitted in the blast area.

In addition, this proposal corrects editorial errors in subsection (w)(2) where the word “attended” is revised to “unattended”, and the word “it” in this subsection is deleted. Revising the word “attended” to “unattended” clarifies that the loaded holes must either be attended, or if left unattended, the specified conditions in subsection (w)(2) must be met. This proposal is consistent with the original intent of this standard.

DOCUMENTS RELIED UPON

1. Occupational Safety and Health Appeals Board Decision in the Matter of Ladd and Associates, Docket Nos. 99-R2D6-2068 and 2069, in the Matter of Ladd and Associates, dated January 26, 2001.
2. 29 Code of Federal Regulations, Section 1926.905, Loading of Explosives or Blasting Agents, (Revised as of July 1, 2008).

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action because this rulemaking only proposes to clarify that, as with loading operations, no one but the attendant(s), the loading/detonation crew, inspection personnel, and authorized supervisory personnel are to be allowed within 50-foot of the holes loaded with explosive materials. The proposal is consistent with the intent of the affected standard and will not result in added cost or savings to state agencies.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal clarifies that no one but the attendant(s), the loading/detonation crew, inspection personnel, and authorized supervisory personnel are to be allowed within 50-foot of the holes loaded with explosive materials. This proposal is consistent with the intent of the affected standard and will not result in added cost or savings to state agencies.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.